

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:INTL:B06  
PLR-111995-14

Date:  
July 25, 2014

In re:

TY:

**LEGEND**

Taxpayer =  
Law Firm 1 =  
Law Firm 2 =  
Company =  
State =  
CPA =  
Accounting Firm =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =

Dear \_\_\_\_\_ :

This responds to a letter dated March 13, 2014, submitted by Law Firm 1 requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC") for Taxpayer's first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Law Firm 1 and accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the

material submitted in support of the request for rulings. It is subject to verification on examination.

### **FACTS**

Taxpayer is a domestic corporation wholly owned by Company. Taxpayer was formed to serve as an interest charge domestic international sales corporation ("IC-DISC") and has established a commission arrangement with Company. Law Firm 2 prepared the articles of incorporation. Taxpayer was formed on Date 1 in State as a calendar year taxpayer.

Prior to Date 1, Company consulted and engaged with CPA to advise on the incorporation and establishment of the IC-DISC. Company then engaged Law Firm 2 to incorporate the IC-DISC. Three weeks later, CPA mailed Form 4876-A, Election to be Treated as an IC-DISC, to Company with instructions for completion, execution, and filing of the form with the Service. CPA advised Company that the deadline for filing the form with the Service was Date 2. No further reminder was made by CPA prior to the filing deadline. The form was inadvertently placed in a file by a staff member of Company. About two months after the election deadline, Company discovered that the election was not filed with the Service. At that time, Company contacted Accounting Firm seeking advice regarding the late filing of the election. The Accounting Firm advised Company to contact Law Firm 1. On or about Date 3, Company engaged Law Firm 1.

According to a subsequent submission by Law Firm 1 dated May 1, 2014, the organizational acts and resolutions of Taxpayer state that Taxpayer issued and sold 100 shares of its common stock with no par value to Company for \$100 consideration. It is unclear whether this consideration was paid. Three days after Date 3, \$2,500 was deposited to the bank account of Taxpayer. Journal entries dated as of Date 4 record the \$2,500 as credited to the capital stock account of Taxpayer.

Taxpayer has requested a ruling that grants an extension of time of 60 days from the date of the ruling letter to file Form 4876-A and that such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

### **LAW AND ANALYSIS**

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC<sup>1</sup> shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

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<sup>1</sup> As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Section 992(b)(1)(C) provides that the term “DISC” means, with respect to any taxable year, a corporation that is incorporated under the laws of any state and satisfies a number of conditions, including that such corporation does not have more than one class of stock, and that the par or stated value of its outstanding stock is at least \$2500 on each day of the taxable year.

Treas. Reg. § 1.992-1(d)(1) provides that, in the case of a corporation that has elected to be treated as a DISC for its first taxable year, the capitalization requirement of section 992(b)(1)(C) is satisfied for that year if the par value (or, in the case of stock without par value, the stated value) of the corporation’s outstanding stock is at least \$2,500 on the last day of the period within which the election must be made and on each succeeding day of the year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code (except subtitles E, G, H, and I).

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer’s ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer’s first taxable year. This ruling only extends the time for Taxpayer to make an election to be treated as an IC-DISC; in particular, the granting of an extension of time in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the

election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). The facts provided in the letter submitted by Law Firm 1 dated March 13, 2014, as supplemented by the letter dated May 1, 2014, indicate that Taxpayer fails to qualify as an IC-DISC for its first taxable year because Taxpayer failed to meet the capitalization requirement under section 992(b)(1)(C) and Treas. Reg. § 1.992-1(d)(1).

A copy of this letter ruling should be filed with the Federal income tax return for the taxable years to which it relates.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

Pursuant to a Power of Attorney on file in this office, copies of this ruling letter are being furnished to your authorized representatives.

Sincerely,

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Marissa K. Rensen  
Assistant to the Branch Chief, Branch 6  
Office of the Associate Chief Counsel  
(International)

cc: